tion. Plaintiff then proceeded to garnishee X for the amount of the judgment. At the time the injuries were received, X had insured defendant "against loss and expense * * * *for damages* on account of injuries * * * suffered * * * by any employee of the assured," the additional stipulation being made that no action should lie against the insurer "for any loss or expense under the policy except for loss or expense actually sustained and paid in satisfaction of a final judgment." *Held,* (BEAN, J., dissenting), that X, the garnishee, was not liable for any amount over $124, the sum actually paid by the assured on the judgment. *Scheuerman* v. *Matheson,* (Ore.) 144 Pac. 1177.

The court was led to this conclusion by the consideration that under an insurance policy of this kind, there is no privity of contract between the employee and the insurer, and since "in garnishment proceedings, the plaintiff acquires no greater rights against the garnishee than the defendant himself has", the insurer, by the terms of the policy, was not liable by garnishment for any sum except that actually paid by the insured on the judgment, that being the only amount for which the insured could maintain action against the insurer. The great weight of American authority is in accordance with this reasoning. Where the policy contains provisions like those present in the case under consideration, it has been held quite generally that the contract of insurance is one of indemnity against actual loss and damage and that the insurer is liable to no one until the insured has actually paid the loss recovered by judicial proceedings. *Allen* v. *Aetna Life Ins. Co.,* 145 Fed. 881; *Finley* v. *U. S. Cas. Co.,* 113 Tenn. 592; *Carter* v. *Aetna Life Ins. Co.,* 76 Kan. 275; *Stenbom* v. *Brown-Corliss Engine Co.,* 137 Wis. 564; *Pfeiler* v. *Penn Allen Cement Co.,* 240 Pa. 468; *Connelly* v. *Bolster,* 187 Mass. 266; *Ford* v. *Aetna Life Ins. Co.,* 70 Wash. 29; *Fenton* v. *Fid. & Cas. Co.,* 36 Ore. 283. The same rule has been applied where injured employees have sought to reach the fund under similar policies by suits in equity. *Frye* v. *Bath Gas Co.,* 97 Me. 241; *Burke* v. *London Guar. & Acci. Co.,* 93 N. Y. Supp. 652; *Beyer* v. *Inter. Aluminum Co.,* 101 N. Y. Supp. 83; *Kinnan* v. *Fid. & C. Co.,* 107 Ill. App. 406; *Cushman* v. *Carbondale Fuel Co.,* 122 Ia. 656. This class of cases, however, is to be distinguished from those in which the policy of insurance is merely against liability. In such cases, the insurer is generally held liable to garnishment by the employee on the theory that as soon as an accident occurs, the amount of the policy immediately becomes an asset of the employer. *Hoven* v. *Emp. L. Assur. Corp.,* 93 Wis. 201; *Anoka Lumber Co.* v. *Fid. & Cas. Co.,* 63 Minn. 286; *Sanders* v. *Frankfort Marine Ins. Co., 72* N. H. 485. It is to be noted, however, that a few cases sometimes cited in support of this second rule are directly in conflict with the instant case, and the rule which it sanctions. *Peterson* v. *Adan,* 119 Minn. 308; *Jones* v. *Childs,* 8 Nev. 121; *Fritchie* v. *Miller's Extract Co.,* 197 Pa. 401.

JUDGMENTS—INJUNCTIONS BY FEDERAL COURTS TO ENJOIN COLLECTION OF JUDGMENT OF STATE COURT—DUE PROCESS OF LAW.—A Louisiana statute imposes upon every foreign corporation doing business within the state the

duty of filing a written declaration setting forth the places in the state where it is doing business and naming agents in the state upon whom process may be served; and further provides that suit against any such corporation failing to observe the duty may be begun by service of process upon the secretary of state. One Simon, a resident of Louisiana, while riding from a point in Alabama to a place in Mississippi, was injured by a collision on the lines of the Southern Railway Company. He commenced suit in Louisiana against the company by service under the statute upon the assistant secretary of state. The company had no other notice and no actual knowledge of the suit. Judgment by default was given for Simon. Upon application to the federal courts for an injunction to restrain collection of the judgment, *held,* (1) that Rev. Stat. 720, forbidding a federal court "to stay proceedings in any court of a state" does not forbid an injunction to restrain a party from collecting a void judgment given in a state court, and (2) that the statutory consent of a foreign corporation to be sued upon process served on an officer appointed by statute does not extend to causes of action arising outside the state. *Simon* v. *Southern Railway Company,* 35 Sup. Ct. 255.

The United States courts by their general equity powers may, when they have jurisdiction of the parties, enjoin the collection of fraudulent (*McDaniel* v. *Taylor,* 196 U. S. 415, 423) or void judgments. (*Harris* v. *Hardeman,* 14 How. 339; *Williamson* v. *Berry,* 8 How. 541; *Scott* v. *McNeal,* 154 U. S. 46; *West. Indemnity Co.* v. *Ruff,* 235 U. S. 273.) The United States courts may not stay original or supplementary proceedings in a state court (*Mutual Reserve* v. *Phelps,* 190 U. S. 159) or revise its judgment; but when the litigation has ended and a final judgment has been obtained the United States courts may enjoin the collection of a judgment given in a state court when such collection would be inequitable (*Julian* v. *Central Trust Co.,* 193 U. S. 192), and, a fortiori, when the purported judgment is, in fact, absolutely void. *Marshall* v. *Holmes,* 141 U. S. 597; *Gaines* v. *Fuentes,* 92 U. S. 10; *Barrow* v. *Hunton,* 99 U. S. 85. There is a clear distinction between enjoining a party from using a judgment in a state court and staying proceedings in such a court. The federal courts may do the former but not the latter. *Marshall* v. *Holmes,* 141 U. S. 589; *Gaines* v. *Fuentes,* 92 U. S. 10; *Barrow* v. *Hunton,* 99 U. S. 85; *McDaniel* v. *Traylor,* 196 U. S. 415; *Arrowsmith* v. *Gleason,* 129 U. S. 86; *Johnson* v. *Waters,* 111 U. S. 640; *Dobbins* v. *Los Angeles,* 195 U. S. 224; *Howard* v. *De Cordova,* 177 U. S. 609. The principal case decides that this may be done in a suit commenced in the federal courts as well as in one transferred from a state court, which latter proceeding was involved in *Marshall* v. *Holmes,* supra. Excepting, perhaps, foreign corporations engaged in the employ of the federal government upon business requiring them to enter a state, and those engaged in interstate commerce, the state has the power to provide for substituted service of process upon foreign corporations doing business within the state, to require them to name agents upon whom process may be served, and to provide that in case such corporations fail to name such agents process may be served upon certain officers of the state. This right is based

upon the power of the state to exclude foreign corporations, and upon the theory that in consideration of being allowed to do business within a state a foreign corporation impliedly contracts to be subject to the laws of the state. *Mutual Reserve* v. *Phelps,* 190 U. S. 149; *Mut. Life Ins. Co.* v. *Sprately,* 172 U. S. 603. The corporation, however, does not impliedly consent to be sued upon such service of process on causes of action arising outside the state. *Old Wayne Life Ass'n* v. *McDonough,* 204 U. S. 22. Upon this ground the court in the principal case based its decision that the service was a nullity. It is also implied, and, in fact, is stated therein that a state has no power to provide for such service to get jurisdiction of a corporation on causes of action arising outside the state. We have found no case in which the statute has *in direct terms* provided that the sort of substituted service in question shall apply to actions arising outside the state. Upon the questions whether there was fraud in procuring the judgment, and whether service upon the assistant secretary was sufficient when the statute provided for service upon the secretary, the court in the principal case expressly avoided a decision. Many cases may be found, however, in which it has been decided that valid substituted service upon a corporation is had only by following the statute to the very letter.

LIFE ESTATES—INJURY BY STRANGER—EXTENT AND GROUND OF RECOVERY.—A life tenant sued for the defendant's negligence in setting fire to the premises. *Held,* that he could recover not only for the injury to his life estate, but also for the damage to the inheritance. *Rogers* v. *Atlantic G. & P. Co.,* (N. Y. 1915) 107 N. E. 661.

The common rule is that the tenant may recover only for the injury to his estate, and the remainderman has an independent action for his damage. *Jordan* v. *City of Benward,* 42 W. Va. 712; *Sagar* v. *Eckert,* 3 Ill. App. 412; *Wood* v. *Griffin,* 46 N. H. 174; *Rupel* v. *Ohio Oil Co.,* 176 Ind. 4; 4 SUTHERLAND, DAMAGES, § 1012. And in Pennsylvania it is held that they may join as parties plaintiff in an action. *McIntire* v. *Coal Co.,* 118 Pa. 108. The court in the principal case expressly rejects the theory of the tenant being allowed to recover for the entire damage on the grounds of the tenant's liability to the remainderman for waste, *Moeckel* v. *Cross & Co.,* 190 Mass. 280; *Cargill* v. *Sewall,* 19 Me. 288. On this point the court's opinion is very illuminating, there being a very full and intelligent examination of the tenant's liability for permissive waste at common law and under the statutes. See also articles by Prof. KIRCHWEY in 8 COL. L. REV. 425, 624. The court arrives at its decision on an analogy to the bailment relation, where the bailee may recover for the whole injury, and holds as trustee the amount due to the bailor for the permanent injury. Such analogy is certainly valid, since the life tenant and bailee were both originally liable to the remainderman or bailor, 2 POLLOCK & MAITLAND, HISTORY OF ENGLISH LAW, 170.

MINES AND MINERALS—ADVERSE POSSESSION BY OCCUPATION OF SURFACE.—Possession of the surface of land is not adverse to the title to the coal thereunder, where the estate in the coal has been severed as to title. *Shrewsbury, et al.* v. *Pocahontas Coal & Coke Co.,* (1914) 219 Fed. 142.